

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 271 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRATHAMSINH K PATEL

Versus

CHAIRMAN/VACHHAVAD DUDH UTPADAK SAHAKARI MANDLI LTD.

Appearance:

MR RV DESAI for Petitioner

MR AY KOGJE for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/11/98

ORAL JUDGEMENT

The short question arises for consideration is,
"Whether the Industrial Court or the Labour Court can dismiss a Reference made under Section 10 of the IDA, 1947 for non-prosecution ?"

2. The necessary facts are that the services of the petitioner were terminated by the respondent establishment. An industrial dispute was raised which

culminated into a Reference to the Labour Court at Godhara. The reference was registered as (LCG) No. 508 of 1990. The statement of claim was not filed by the petitioner or the Union and as such, the Labour Court by an Order dated 17th November, 1992 rejected the reference for want of prosecution. An ex parte award was subsequently published in the month of December, 1992. The petitioner filed Misc. Civil Application being 63 of 1993 for restoration of the Reference which was rejected by an order dated 29th November, 1996.

3. It is contended by Mr. R.V Desai that even if the workman raising the industrial dispute does not file the statement of claim, the Labour Court or the Industrial Tribunal is under an obligation to adjudicate the reference and the reference cannot be rejected merely on the ground that the workman has not filed the statement of claim. He has placed reliance on a decision of Kerala High Court in the case of Workmen of Travancore Rayons Limited v. Manager, Travancore Rayons Limited & Anr., 1968 Lab. I.C. 139, a decision of Mysore High Court in Management of Pandavapura Sahakara Sakkare Karkhane Limited v. State of Mysore & Ors., 1969 Lab.I.C 729. On the other hand, Mr. Kogje, learned advocate appearing for the respondent submitted that in view of the conduct of the petitioner, this Court should decline to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. It is stated that the petitioner is abusing the process of law. He initially filed a Civil suit challenging the order of dismissal. Application Exh.5 filed by the petitioner in the said suit was rejected. He also filed a Lavad suit before the Board of Nominees in which he also failed to obtain injunction. The matter was unsuccessfully carried upto the Gujarat State Cooperative Tribunal. On facts, it is stated that the petitioner is removed by a valid resolution passed on 21st September, 1989 in the 6th Annual General Meeting of the respondent-Mandali. It is also stated that the petitioner has no cause to invoke the labour laws in as much as the petitioner is a member of the said Mandali and he was nominated to the post of Secretary in the Annual General Meeting of the said Mandali. It is also submitted that the petitioner is not a 'workman' within the definition meaning of Section 2 (s) of the Industrial Disputes Act, 1947. An Affidavit has also been filed by Dhabribhai Rathod, Chairman of the respondent Mandli. So far as the legal position with respect to rejection of the reference for want of prosecution is concerned, the same is not seriously disputed by Mr.Kogje.

4. Section 15 of the Industrial Disputes Act casts a duty on the Tribunal to adjudicate the dispute referred under Section 10 of the Act, and answer the same, by way of submitting the award to State Government. Section 15 reads as follows :-

"15. Duties of Labour Courts, Tribunal &
National Tribunals -

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section [2-A] of Section 10, submit its award to the appropriate Government."

The word "Award" has been defined under Section 2 (b) of the Act which reads as follows :-

"2(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A."

5. The definition clearly stipulates determination of the industrial dispute or any question relating thereto referred to the Labour Court or the Industrial Tribunal. There can be no determination of a dispute much less the industrial dispute unless there is an adjudication on merit. The determination may be interim or final but mere dismissal of a reference for non prosecution by no stretch of imagination can said to be determination of a dispute. It is of course true that when a matter is withdrawn, there remains no dispute which requires any adjudication and the Labour Court and the Tribunal may permit withdrawal. That would be entirely a different situation. Thus, in my view, a reference made under Section 10 of the Industrial Disputes Act cannot be rejected for want of prosecution. I am fortified in my view by the two decisions referred by the learned advocate for the petitioner.

6. In view of the aforesaid, this Special Civil

Application is allowed and the order of Labour Court, Godhara dated 29th November, 1996 passed in Misc. Civil Application No. 63 of 1993 is quashed and set-aside so is the order dated 17th November, 1992 rejecting the Reference (LCG) No. 508 of 1990 is also quashed and set-aside. Application being Misc. Civil Application No. 63 of 1993 is granted. Reference (LCG) No. 508 of 1990 is restored to its original number to the file of the Labour Court, Godhara. Parties shall appear before the Labour Court, Godhara on 7th December, 1998. The petitioner undertakes to file the statement on 7th December, 1998 and also to cooperate with the Court proceedings. On filing of the statement, it will be open to the respondent to file reply. Rule is made absolute with no order as to costs.

Prakash*